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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LARNEY L. JOHNSON III, Plaintiff and Appellant, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	B205952 (Los Angeles County Super. Ct. No. BC361743)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth A. Grimes, Judge. Affirmed.

Larney L. Johnson III, in pro. per., for Plaintiff and Appellant.

Law Offices of Ivie, McNeill & Wyatt, Rupert A. Byrdsong and Charlie L. Hill for Defendant and Respondent.

Appellant Johnson, a substitute teacher with the Los Angeles Unified School District (District), sued the District for racial discrimination in violation of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) when he was discharged. The trial court granted summary judgment in favor of the District, and Johnson appealed. We affirm because Johnson fails to cite any evidence in the record of racial discrimination.

DISCUSSION

We accept as true the facts and reasonable inferences supported by plaintiff's evidence and defendants' undisputed evidence on the motion for summary judgment. (See *Raghavan v. Boeing Co*. (2005) 133 Cal.App.4th 1120, 1125.)

Johnson does not contend that the District failed to meet its burden as the moving party in a summary judgment motion. Nor could he. The District submitted evidence that it discharged Johnson because he (1) used profanity toward students, (2) hit students with a basketball, (3) left campus during fourth period, and (4) was possibly intoxicated. Rather, Johnson claims that his opposition papers demonstrated the existence of a triable issue of a material fact.

In his complaint, Johnson's allegations mirror the evidence presented against him on the summary judgment motion: He claims he was discharged as a substitute teacher by the District when, during an incident at school, he allegedly swore at students, hit students with a basketball, and possibly was intoxicated; he was also discharged for leaving campus during the fourth period. But he denies any misconduct and claims that he was discharged because of his race.

In his opening brief, Johnson alleges facts with no citations to the record. After being challenged on this point by the District in its respondent's brief, Johnson, in his reply brief, offers citations to the record to establish the following: A teacher witness testified that during a melee caused by students Johnson was not intoxicated and did not throw balls at students; the vice principal testified that Johnson was not intoxicated; Johnson testified that he did not throw balls at students but that they threw

balls at him; another teacher testified that he was nearby during the incident and did not hear Johnson swear; and another teacher testified that it was normal for teachers to leave campus for lunch and she had done so herself. There are no citations to the record regarding evidence of racial discrimination.

That Johnson failed to cite to any facts in the record in his opening brief would warrant our dismissing his appeal. (See *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 363, fn. 7; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116.) Our overlooking that and allowing him to do so in his reply brief places Johnson in no better position. Assuming that he raised a triable issue of fact as to being intoxicated, throwing balls and swearing at students, and being permitted to leave campus for lunch, these facts are silent with regard to his claim of being discharged because of his race. Thus, we conclude that he has failed to meet his burden on appeal to challenge the trial court's summary judgment. (See *Arteaga v. Brink's, Inc*. (2008) 163 Cal.App.4th 327, 342–344 [in response to employer's evidence in support of summary judgment motion on FEHA claim, employee must show more than that employer was wrong or made mistake; employee must produce evidence that employer had discriminatory motive].)

Were we to overlook all of the above and focus on Johnson's opposition papers to the motion for summary judgment, his appeal would still fail. At the beginning of his separate statement, Johnson did not dispute that he threw balls and left campus during fourth period; that he was unaware of a policy allowing a teacher to leave the premises simply by telling another teacher; and that he could have done anything during the lunch hour except leave campus. After responding to the District's "undisputed" facts, Johnson added several "disputed" facts of his own, including, that a fellow teacher who was present at the incident did not see Johnson throw balls or swear at students and did not think Johnson was intoxicated; that no one other than students told the vice principal that Johnson swore at them; that there was no clear rule that teachers could not leave campus during lunch and other teachers did so; that

Johnson did not throw balls or swear at students; and that the vice principal reported that Johnson was possibly intoxicated but was not certain. According to Johnson's testimony, he did not swear or throw balls at students. Johnson also added facts about a substitute teacher's service report, a notice of separation, and the vice principal's interoffice correspondence regarding interviews with a student and another person's opinion that Johnson was drunk. Again, no evidence about race was offered.

In light of the District's evidence as to the legitimate reasons for Johnson's discharge and Johnson's complete lack of evidence about racial discrimination, Johnson has failed to establish a triable issue of a material fact that he was discharged as a substitute teacher in violation of the FEHA. Accordingly, we affirm.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

FERNS, J.*

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.